

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE: FRESENIUS GRANUFLO/)	
NATURALYTE DIALYSATE)	No. 1:13-md-02428-DPW
PRODUCTS LIABILITY LITIGATION)	
)	
<u>This Document Relates To:</u>)	
)	
<i>Oklahoma Cases</i>)	

DEFENDANTS’ RESPONSE TO PEC’S SUPPLEMENTAL MEMORANDUM IN SUPPORT OF MOTION FOR APPOINTMENT OF GLOBAL SETTLEMENT MASTER

Defendants Fresenius Medical Care Holdings, Inc., Fresenius USA, Inc., Fresenius USA Manufacturing, Inc., and Fresenius USA Marketing, Inc., (collectively “FMCNA”) submit this response to the Supplement to PEC’s Motion for Appointment of Eric D. Green As Global Settlement Special Master with Submission of Revised Proposed Order (“Supplemental Memorandum”) with this Court on May 19, 2016 (Doc. #1746). As indicated in the Supplemental Memorandum, FMCNA did not oppose the PEC’s original Motion for Appointment of Eric D. Green as Global Settlement Special Master (Doc. #1734), which described Professor Green’s proposed responsibilities to include serving as a mediator for any disputes arising between the PEC and FMCNA in the creation of a Master Settlement Agreement. In its Supplemental Memorandum, the PEC elaborated on the scope of Professor Green’s proposed responsibilities by stating that he would “presid[e] over post-settlement disputes that might arise concerning the terms and implementation of the Master Settlement Agreement.” Supplemental Memorandum at 3. FMCNA submits this response to make clear its position concerning the scope of Professor Green’s duties and responsibilities should the Court issue an order appointing him as Global Settlement Special Master.

FMCNA consents to Professor Green serving as *mediator* for any disputes that arise between the Plaintiffs and Defendants relating to the Master Settlement Agreement. However, FMCNA seeks to clarify through this response that it does not assent to vesting Professor Green with the binding authority of a final arbiter “presiding” over settlement-related disputes. While FMCNA fully expects that the parties will be able to resolve any disputes that may arise in further settlement negotiations, it retains all rights to resume litigation before this Court should settlement fail.

As it concerns the portions of the Supplemental Memorandum that relate to Professor Green’s proposed duties and responsibilities between the PEC and individual Plaintiffs/Claimants, FMCNA takes no position and defers to the PEC and the Court on those issues.

May 24, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Maria R. Durant, hereby certify that a true and correct copy of the foregoing document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on May 24, 2016.

Maria R. Durant